

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2610 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DAHYABHAI NARSINHBHAI MAKWANA

Appearance:

MRS VASAVDATTA BHATT for Petitioner

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/05/97

ORAL JUDGEMENT

Rule. Party in person Shri Dahyabhai Narsinhbhai Makwana waives service of the Rule.

Respondent Shri Dahyabhai Narsinhbhai Makwana party in person is present, who is duly identified by Ms. Bhatt herself. The respondent-workman was working as a conductor with the Gujarat State Road Transport Corporation. He was sought to be removed from the service of the Corporation and the Corporation had moved

an approval application. The approval application was rejected by the competent authority i.e. Conciliation Officer and Dy. Labour Commissioner, Ahmedabad vide his order dated 4.9.96 and still the respondent-workman was removed from service on 28.9.95. Against this order dated 4.9.96 the present petition was filed on 1.4.97.

Today when the matter came up before the court, the learned counsel for the Corporation has submitted that she had instructions from the Corporation to keep the respondent in service without any wages for the intervening period from 28.9.95 till the date he is reinstated but without giving the relief of continuity of service. The respondent-workman submitted that he was prepared to forgo the backwages for the intervening period but he is required to be reinstated with continuity of service. Services of Shri Kamal Trivedi, learned advocate, who was present in the Court were made use of so as to help the party in person and it is given out that even in the letter, which the respondent had sent to the Corporation, he had claimed reinstatement with continuity of service while forgoing the backwages.

I have heard learned counsel for the Corporation as also the party in person and I find that this is a matter in which the period for which continuity of service claimed by the respondent-workman is not a long period. This period is even short of 2 years because he was removed on 28.9.95 and when the respondent is forgoing the backwages for the entire intervening period and he had already served the Corporation for a period of nearly 15 years prior to 28.9.95, I find that it will be arbitrary and unreasonable on the part of the Corporation to deny him continuity of service in the facts of this case and that too for a period even short of 2 years. Actually it is a period of nearly 1 year and 7 months only for which continuity of service is claimed and the backwages are forgone. When the Corporation is prepared to reinstate the respondent and the respondent is prepared to forgo the backwages, the request of the respondent to allow him the continuity of service can not be said to be unreasonable and there appears to be no justification in the petitioner's claim to deny the relief of continuity of service.

In the facts and circumstances of this case, I deem it appropriate to direct that the respondent be reinstated with effect from 1.5.97 with continuity of service from the period on and from 28.9.95 till 1.5.97, but he shall not be entitled to any backwages for this intervening period and this intervening period will be

treated as service to the credit of the respondent for all purposes except the backwages. The reinstatement order with effect from 1.5.97 in terms of the directions, as aforesaid, shall be issued by the Corporation on or before 9.5.97. This Special Civil Application is, therefore, decided in the terms as aforesaid and the Rule is hereby discharged. No order as to costs.